

# TROUT LINE

Fall  
2012



Newsletter from the Montana Council of Trout Unlimited

## Not so capitol ideas

Legislature could be a rerun of 2011

by Staff

When the Montana Legislature convenes in January we can only hope it won't be a rerun of the last session, which was dominated by nutty proposals, rancor between lawmakers, and full-on attacks on scientific fish and wildlife management, water quality protections and stream access.

But don't count on it.

With the dust settled on the election, legislative leaders in place and committee chairman selected, the upcoming legislative chemistry looks eerily similar to 2011. A Democratic governor, this time Steve Bullock, will face Republican majorities in the House and Senate. Key committees will again be chaired and dominated by folks unfriendly to conservation.

Less certain is whether Montana is

again in for a blizzard of measures of the sort that outgoing Gov. Schweitzer termed "batcrap crazy." Last session saw rejected proposals legalizing hunting with spears, challenging President Obama's citizenship, and declaring global warming to be non-existent (but if it does exist humans aren't causing it, and besides, it's good for Montana). Some of the legislators who proposed the strangest stuff last session will not be back. Some will, perhaps with more odd proposals, as evidenced

See *LEGISLATURE*, page 4



Amy Jimmerson

Trout, and the water that sustains them, will continue to be Montana Trout Unlimited's focus at the 2013 Legislative session.

## State and tribal water accord near

by Bruce Farling

A dominating story of the upcoming Montana Legislature could involve ratification of a long-awaited and complex water compact among the Confederated Salish and Kootenai Tribes, State of Montana and federal government. The accord quantifies all tribal reserved water rights on the sprawling Flathead Indian Reservation as well as off-reservation in Montana west of the Continental Divide.

Reserved water rights came with the establishment of federal reserves, such as national forests, national parks or monuments, BLM lands and

Indian Reservations. These rights were not initially quantified. In the 1970s, Montana created a Reserved Water Rights Compact Commission to negotiate the details of the reserved water rights necessary to meet the purposes of the reservations. In the case of the Bitterroot Salish, Pend Oreille, and Kootenai peoples, the 1855 Hellgate Treaty guaranteed them reserved water rights on the reservation, as well as aboriginal water rights for cultural purposes and for hunting and fishing in all accustomed places on and off the reservation. Therefore, much like water users in

Montana's water rights system, tribal interests have legal rights to water on and off reservations. Further, because courts have ruled that rights to fish means you need fish and fish need water, the tribes have rights to instream flows off reservation in areas they used historically, which in the compact includes all lands west of the Divide. The puzzle has been how to identify and quantify these rights.

With a shared objective to not harm existing water users, compact negotiators crafted these key elements for the draft agreement

See *WATER*, page 5

# Fall/12

**MONTANA TU'S MISSION** is to conserve, protect and restore Montana's world-class coldwater fisheries and their watersheds.

Founded in 1964, Montana Trout Unlimited is a statewide grassroots organization comprised of 13 chapters and approximately 3,500 TU members.

[www.montanatu.org](http://www.montanatu.org)

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## CHAIRMAN'S MESSAGE

*Phil: Do you ever have Deja Vu, Mrs. Lancaster?*

*Mrs. Lancaster: I don't think so, but I could check with the kitchen.*  
--from "Groundhog Day"

**M**y, time flies. In December 2010, I replaced Doug Nation as Montana TU chairman. The 2011 Montana Legislature was upon us. From the trout perspective, prospects looked grim. Further, invasive lake trout were reducing native trout in the Flathead. Hydrologic fracturing was becoming prevalent in oil and gas development, with unknown effects on water quality. I remember thinking, "Man, there is a lot of work to be done here."

In terms of conservation issues we continue to face, it's like the movie "Groundhog Day." We've seen it before:

The 2013 Legislature looks like it will challenge trout conservation and recreational access. We will again be asking you to talk to your legislators about bills we support and oppose.

Please stand up, again, to defend your right to recreate in Montana's streams.

Non-native lake trout still pose grave danger to native bull trout and westslope cutthroats, especially in Flathead Lake and Glacier National Park. We are starting to see encouraging signs that removing these non-natives in Yellowstone Lake is leading to increasing numbers of cutthroat trout. We should start to



Dan Short

see positive results from lake trout removal at Swan Lake. These successes, we hope, will support the case for lake trout netting in Flathead Lake.

Hydrologic fracturing is still with us. The jury is out whether safeguards are adequate for protecting water quality, but we know that the dedicated staff and volunteers of MTU will make sure that this kind of development is done properly.

Despite the continued challenges, Montana TU moves forward. And so does our leadership. I will be moving into the position that everybody wants: past council chair. We're fortunate to have good candidates for our new executive committee, including Doug Haacke from Billings, who has been nominated as the new chairman. Chris Schustrom, of Whitefish, Kelley Willett of Missoula and Sharon Sweeney-Fee of Livingston have been nominated for other officer positions. Our election occurs December 8. As members of TU national's Board of Trustees, Tom Anacker of Bozeman and Dan Vermillion of Livingston will also continue as rock solid members of our executive committee.

One executive committee change is unfortunate. Doug Nation is stepping down as our National Leadership Council representative to TU national. Doug is and will continue to be an impassioned friend of wild and native trout. We wish him well (But he won't be far. He's the new president of the Bitterroot Chapter board).

Finally, I want to recognize the MTU staff. Bruce, Kate, Michael, Mark and our newest member Tim are some of the hardest working and most dedicated staff anyone could ask for. I am proud to be associated with an organization that has such a high caliber of staff.

*Dan*

Fall 2012



### Coming January 2013, a new look for MTU website



The same great resource, with a facelift! In January, Montana TU will launch a newly designed website. With the help of Studio Verde Creative in Missoula, MTU has completely redesigned the site's look, feel and functionality. Better integration with social media and action alerts as well as improved compatibility with tablets and smartphones will maximize the site's usefulness as a tool for conservation advocacy.

[www.montanatu.org](http://www.montanatu.org)



### Leaving your legacy with Montana Trout Unlimited is easy!

You don't have to be retired – or wealthy – to permanently support our work to conserve, protect and restore Montana's coldwater fisheries and their watersheds. Consider planned giving tools that begin with a will or trust. A gift of any size can benefit Montana TU's work throughout the state. And we can help design the right approach for you and your family.

For more information on how you can make a gift of a lifetime to Montana TU, please contact us.

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Montana Trout Unlimited

*LEGISLATURE (from page 1)*  
by Sen. Jerry O'Neil's (R-Columbia Falls) recent request to take his legislative pay in gold coins.

With a budget surplus of more than \$400 million, it appears fiscal matters won't dominate the upcoming session. This increases the odds that legislators will focus on pet peeves. Two topics likely to be near the top of the list are the management priorities of Montana Fish, Wildlife and Parks (FWP) and accommodation for the fossil fuel industries. Sen. John Brenden (R-Scobey), the new chair of the Senate Fish, Wildlife and Parks Committee, has long been obsessed with radically

ignoring clear market signals that coal-based energy production is not competitive in the nation's energy future. Recently, PPL Montana announced it would close its antiquated Corette coal power plan in Billings. Though some politicians blamed it on environmental regulation and President Obama, the primary cause is simply that the power it produces isn't competitive in the marketplace. Managers of the Decker Coal Mine in Southeast Montana recently announced they would lay off 75 workers at what was once one of the nation's largest surface coalmines. The main reason: The mine's primary

customer would be switching to cheaper natural gas.

Remarkably, industry trade publications hint that PPL might be looking to peddle its coal and perhaps hydro facilities because, amazingly, they aren't regulated enough. That is, when the 1997 Legislature mistakenly deregulated electrical generation and distribution it eliminated a guaranteed rate of return on those investments, leaving

them at the mercy of the free market. The ironic result: Competition with abundant natural gas isn't producing predictable profits from coal burning.

As if this isn't enough, financing for new coal projects is getting harder to come by: Bankers are not only realizing that coal isn't adaptable in today's fast-paced energy markets, they're seeing unacceptable risks with investing in an activity that plays such a major role in climate change.

Despite these unmistakable market headwinds, some stubborn legislators are still living in the 1950s,

insisting that more environmentally damaging coal mining and coal burning is essential. Some want to reduce incentives for renewable energy projects featuring wind and solar power. Their primary target will be the Montana law that requires utilities here to dedicate a modest 15 percent of their portfolio to renewable production.

TU members ask before every session: Will there be an attack on stream access? Probably. Last session, anonymous well-heeled landowners funded three lobbyists, including former U.S. Attorney Bill Mercer, to push a bill classifying many Montana stream as "ditches," making them off-limits to recreational use by the public. Expect similar mischief this session.

So, hold on to your hats. The Legislature is in town. There will be surprises. All TU members should pay attention. To sign up for legislative updates and alerts, contact Michael Gibson at michael@montanatu.org.

For more information, contact Mark Aagenes at mark@montanatu.org.



Laws passed in the 2013 Legislature could stifle development of renewable power sources in the state.

changing FWP. In the past he has tried to prohibit the agency from purchasing crucial habitats and sought opportunities to privatize public fish and wildlife. TU members can expect attacks on FWP to be prominent this session. Also likely will be attacks on the department's budget, including cuts for important programs such as the Future Fisheries Improvement Program, which has funded millions of dollars of cooperative habitat restoration since 1995.

Many legislators will seek ways to increase coal mining in the state,



## Employee Contributions

**Does your company match employee contributions to nonprofits? Many businesses will match charitable donations made by their employees and retirees. Some even double the money. It's an excellent way to stretch your conservation dollars with a gift to Montana TU.**

For more information on how you can make a gift to Montana TU, please contact us.

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*WATER (from page 1)*  
now under public review: 1.) establishment of a reservation water rights system independent of the State system; 2.) creation of a five-person tribal-nontribal board to adjudicate reservation water claims; 3.) quantification of tribal instream flow rights benefiting fish on the reservation; and 4.) identification of water rights and stored water that the tribes will co-own for fishery purposes with Montana Fish, Wildlife and Parks (FWP) off reservation in the Kootenai, Swan, Clark Fork and Bitterroot River basins.

Tribal, State and federal negotiators will vote December 19<sup>th</sup> to send the compact to the Legislature for ratification. Once ratified by the State, Congress must approve the compact. The last stop for the agreement will be the tribal council. After all three sovereigns have approved the agreement, the federal government and State will award the tribes funding to help implement compact provisions, especially those for investment in irrigation efficiency on the reservation. Funding hasn't been finalized yet, but it will be in the tens of millions of dollars.

If the compact doesn't go to the Legislature, or, if lawmakers reject it, then it's quite possible arguments over

tribal water rights will end up in court – a prospect that ensures uncertainty and rancor will color water use and development on the reservation for years to come. The only winner in that scenario will be the water rights conflict industry comprised of attorneys and crafty consultants. The other option is to continue negotiations. However, that requires the Legislature to renew the State's compact commission, which sunsets next year.



Amy Jimmerson

Tribal water rights off-reservation could help protect flows in the Clark Fork River.

This state-tribal water compact is not unique. It is the last of seven tribal water compacts to be completed in Montana. It will be the 16<sup>th</sup> of 18 compacts detailing the reserved water rights of federal or tribal reserves in Montana.

Trout Unlimited's interests in this compact are significant. A primary

objective of the tribes is to maintain healthy flows for fish, especially native bull and cutthroat trout. The compact includes creative proposals for protecting headwater flows on reservation, and for improving flows in reservation streams with existing irrigation water rights or those associated with the federal water project in the Mission and Jocko Valleys. It also establishes tribal instream flow rights on lower reaches of the Clark Fork, Swan, and Kootenai Rivers. The priority date for these rights is time immemorial, meaning they are the oldest water rights and therefore are first in line to be protected. The tribes will also co-own Montana FWP's existing rights to stored water used for instream flow enhancement in the Bitterroot River. And most crucially, the compact shifts the old hydroelectric water right at Milltown to the tribes and FWP for maintaining fisheries, with the right to defend 1,200 cfs in critical flows at Bonner during summer.

The draft compact results from years of laborious negotiations. It strikes a sensible balance and largely protects existing water users. It deserves TU support. However, it is under attack from many of the same forces in the Flathead region that assailed previous tribal-state agreements affecting water quality regulation, fish and wildlife management, and gaming. If this opposition sidetracks the deal, it will be to the detriment of all Montanans.

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# CHAPTER NEWS

## Joe Brooks Chapter

The chapter's continued support for science curricula in Livingston schools has increased opportunities for student involvement in stream studies, entomology, bio-control of noxious weeds, and watershed ecology. Photos from their Yellowstone River Clean Up Day and Kids' Fishing Day, as well as updates on activities, meeting dates and issues of concern are posted on the chapter website at [www.joebrookstu.org](http://www.joebrookstu.org).

## Magic City Fly Fishers

A primary conservation goal for TU's Billings-area chapter is to protect

and restore populations of native Yellowstone cutthroat trout. MCFE is contributing \$3,000 to support telemetry work in Yellowstone Lake that identifies and maps lake trout spawning sites. These data should inform efforts to eliminate lake trout eggs and fry, helping to keep these invasive predators in check. This summer, MCFE joined Montana Audubon and others in encouraging families to engage in outdoor activities through the public-private program "Get Outside Montana." Chapter volunteers taught anglers of all ages how to fly cast, tie flies, and tie knots. MCFE is also co-sponsoring a 10-session fly tying class that started in early November.



Sheppard Creek brook trout suppression

## Flathead Valley Chapter

In September chapter volunteers helped Montana FWP net invasive lake trout at Swan Lake. Three years of similar efforts, hopefully, will have reduced predation pressure enough to enable an increase in bull trout spawning. Chapter volunteers also helped the Forest Service remove invasive brook trout from Northwest Montana's Sheppard Creek in an effort to boost native cutthroat trout. Local members testified at a hearing this fall and sent substantive written comments to the Montana Legislature's Interim Water Policy Committee, endorsing proactive legislation to curb the growing problem posed by groundwater wells exempt from permitting. In October, chapter volunteers worked with the Haskill Basin Watershed Council on streambank repair and restoration along Haskill Creek, an important tributary to the Whitefish River and source of drinking water for the City of Whitefish. The chapter also submitted comments to FWP on the Statewide Fisheries Management Plan. Details and the chapter newsletter, as well as other conservation information, are available at [www.flatheadtu.org](http://www.flatheadtu.org).



Haskill Creek Restoration

## Pat Barnes-Missouri River Chapter

In addition to focusing on Montana's 2013 legislative session, PBMRTU plans to improve fundraising for conservation projects in the Missouri, Smith, and Little Blackfoot River watersheds. The chapter's conservation team has submitted four funding proposals to Montana's Natural Resource Damage Program, to increase streamflow, improve and protect riparian habitat, and reduce sediment in the Little Blackfoot River watershed. The chapter is helping fund restoration projects on the Missouri River, Wegner Creek, and Little Prickly Pear Creek, in coordination with Montana FWP. Members continue to monitor a proposed copper mine in the Smith River drainage, and are looking at potential projects in the watershed for investment of Smith River Corridor Enhancement Account money. The chapter is sponsoring 11 Trout in the Classroom (TIC) programs in Helena area schools this year, with the newest at Montana City's elementary school. The Exploration Works museum in Helena will have a TIC display open to the public starting February 2013.

## Madison-Gallatin Chapter

Mad-Gal TU assisted Montana FWP and a property owner with installation of a fish barrier to protect native

Yellowstone cutthroats in Leverich Creek, and is planning a revegetation project for Spring 2013. The chapter's TroutFest Banquet & Auction is February 16, 2013, at Bozeman's Best Western GranTree Inn. Details and ticket info at [www.mgtu.org](http://www.mgtu.org).

## Big Blackfoot Chapter

Ryen Neudecker, BBCTU's project manager, and husband Greg have a new baby girl, Loryn Augusta. The chapter recently installed a fish ladder in Frasier Creek, a Nevada Creek tributary, and irrigation pipes -- to replace ditches -- along Sauerkraut Creek in the upper Blackfoot drainage. BBCTU is nearing completion of a restoration project on Poorman Creek near Lincoln, and is gearing up to help decommission unnecessary forest roads under the Helena National Forest's Blackfoot Travel Plan.

## Snowy Mountain Chapter

Volunteers with TU's Lewistown-area chapter continue to work hard raising funds for the Machler Big Spring Creek Restoration Project. Partners include landowners, state and federal agencies and community groups that aim to bring meanders back to the creek and restore the floodplain. To help, contact Mike Chapman at 406-538-2517 or [bmchap@midrivers.com](mailto:bmchap@midrivers.com).

## NEW OPTIONS FOR MONTANA TU CONTRIBUTORS

We've listened to our supporters, and responded by setting up automatic fund transfer alternatives for those of you who'd prefer to regularly donate to Montana TU. To make a one-time, monthly, quarterly or annual pledge of ANY amount to Montana TU, simply clip this form, fill it out and mail to MTU at PO Box 7186, Missoula, MT 59807 Or, call Kate at Montana TU's Missoula office toll-free: 888-504-0054.

### YES! I'd like to contribute to Montana Trout Unlimited.

NAME \_\_\_\_\_ PHONE \_\_\_\_\_  
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### DONATION OPTIONS

- One-time donation of \$ \_\_\_\_\_.
- Monthly pledge of \$ \_\_\_\_\_ per month.
- Quarterly pledge of \$ \_\_\_\_\_ every three months.
- Annual pledge of \$ \_\_\_\_\_ per year to Montana TU.

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- I have enclosed a blank, voided check and authorize my bank to transfer funds to Montana TU.
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Thanks to all who generously contribute to help conserve, protect and restore Montana's coldwater resources. Every dollar counts!

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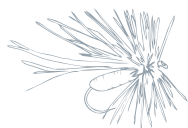
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# TROUT LINE Fall 2012

## UPCOMING EVENTS

[www.montanatu.org](http://www.montanatu.org)

**12/18/12** **Montana TU's Holiday Social**  
4-8 p.m. upstairs at Bayern Brewing, 1507 Montana St., Missoula. Fifty cents per pint sold goes to Montana Trout Unlimited. Bring your favorite holiday appetizer or desert to pass!

**1/17/13** **Watershed Warriors Fundraiser**  
with Joe Brooks TU Chapter, 6 p.m. at the Elks Lodge, 130 S. 2<sup>nd</sup> St., Livingston. Dinner, raffles & program discussion. Guest Scott Opitz presents, "State of the Yellowstone." Contact Sharon at 529-7735 or ssfee123@yahoo.com

**1/26/13** **WestSlope TU's Fly Tying Day**  
in Missoula. Get the latest techniques, patterns & instructions. More soon at [www.WestSlopeTu.org](http://www.WestSlopeTu.org), or contact George at 721-5686.

**2/9/13** **MRF Banquet & Auction**  
6 p.m. at the Heritage Inn, 1700 Fox Farm Rd., Great Falls. Dinner, silent auction, raffles, 'duck pond' & art auction. Details at [www.missouririverflyfishers.com](http://www.missouririverflyfishers.com) or contact Erik at [erikh@scww.net](mailto:erikh@scww.net)

**2/16/13** **A PhD in Fly Fishing w/ Jack Dennis**  
all day seminar (9 a.m. to 5 p.m.) in Missoula, hosted by TU's WestSlope Chapter. Contact Mark at [mark@makdirect.net](mailto:mark@makdirect.net) or 327-9990.

**2/16/13** **Mad-Gal TU's TroutFest Banquet**  
at the Best Western GranTree Inn, 1325 N. 7<sup>th</sup> Ave., Bozeman. Cocktails, hors d'oeuvres, silent & live auctions, dinner, awards & raffles. Doors open at 5 p.m. Ticket info at [www.mgtu.org](http://www.mgtu.org)

**2/21/13** **Joe Brooks TU's Chili Cook-Off**  
6:30 p.m. at the Elks Lodge, 130 S. 2<sup>nd</sup> St., Livingston. Dave Sweet from Wyoming TU shares news on the Yellowstone Lake Project. Contact Sharon at 529-7735 or [ssfee123@yahoo.com](mailto:ssfee123@yahoo.com)

**2/23/13** **WestSlope TU's Banquet & Auction**  
6 p.m. at the Hilton Garden Inn, 3720 N. Reserve, Missoula. Live & silent auctions, raffles, drinks, dinner & more. Tickets on sale in Missoula fly shops starting January 2013. Contact Carey at [westslopechapter.tu@gmail.com](mailto:westslopechapter.tu@gmail.com)

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